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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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PAUL MARAVELIAS

v.

NEW HAMPSHIRE SUPREME COURT,  
ET AL.

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19-cv-487-JL

October 17, 2019

3:04 p.m.

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

APPEARANCES:

For the Plaintiff:

Paul Maravelias  
Pro Se

For the Defendants:

Nancy J. Smith, Esq.  
N.H. Attorney General's Office  
Civil Bureau

Court Reporter:

Susan M. Bateman, LCR, RPR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration this afternoon a motion hearing in civil  
4 case 19-cv-487-JL, Maravelias versus New Hampshire  
5 Supreme Court, et al.

6 THE COURT: All right. We're here on a motion  
7 to dismiss. It's primarily involving implicating the  
8 Rooker-Feldman doctrine and to an extent judicial  
9 immunity. I've read your papers. I'm familiar with  
10 your arguments. I'm happy to hear your oral  
11 presentations now.

12 Can you hear me okay?

13 MS. SMITH: Yes.

14 MR. MARAVELIAS: Yes, your Honor.

15 THE COURT: All right then. It's your motion.

16 MS. SMITH: Yes.

17 Good afternoon, your Honor.

18 Just to recap our arguments briefly related to  
19 Rooker-Feldman, it's our understanding the plaintiff  
20 claims that the fee award is not a judicial proceeding.  
21 For the reasons that we've stated in our motions, we  
22 don't think that's a valid argument. Rule 23 provides  
23 authority for the Court to award attorney fees.

24 And for the cases that we've cited in footnote  
25 5 -- the footnote on page 5 indicates that it is a valid

1 judicial proceeding.

2 We believe a second argument related to why  
3 Rooker-Feldman doesn't apply relates to his argument  
4 that Rooker-Feldman doesn't apply because he's  
5 challenging the constitutionality of Rule 23 itself.

6 THE COURT: Yeah, yeah.

7 MS. SMITH: On that one there's a fairly  
8 recent First Circuit case that we cited that points out  
9 again that where the challenge constitutionally would  
10 still require an end-run around the state court judgment  
11 --

12 THE COURT: Sometimes.

13 MS. SMITH: -- it doesn't invalidate the  
14 Rooker-Feldman doctrine and that is still what -- the  
15 relief he's seeking here would require an end run  
16 around the --

17 THE COURT: Well, what about just a  
18 declaratory request -- leaving aside the end-run around,  
19 because I think you might have a point there. To the  
20 extent the challenge is just an end-run around the  
21 order, Rooker-Feldman probably does bar it.

22 But what about just an argument by a citizen  
23 who's been impacted, who has standing, as he does, that  
24 Rule 23 is just facially invalid? That's an argument  
25 one is entitled to make, and that's not barred by

1 Rooker-Feldman, is it?

2 MS. SMITH: If it would require the setting  
3 aside of a state court judgment, yes.

4 THE COURT: Well, what if the Court limited  
5 its relief. What if I said today, right -- and I'm not  
6 saying I'm going to do this. I'm just --  
7 hypothetically. What if I said today, well, no, his  
8 claims to set aside the order are barred by  
9 Rooker-Feldman, he can't bring them, but there still  
10 remains a question, right, of the facial validity and he  
11 should be entitled to litigate that. I'm not sure  
12 Rooker-Feldman bars that claim. Just a facial challenge  
13 to Rule 23 as violative of the United States  
14 Constitution. Do you agree with me?

15 MS. SMITH: Yes, if it were totally divorced  
16 from the facts of his case, if it was a pure facial  
17 validity challenge.

18 THE COURT: But then he would have no  
19 standing. Then you would say he has no standing,  
20 wouldn't you, right?

21 MS. SMITH: Right.

22 THE COURT: You're trying to get -- anyway, I  
23 think I get your point.

24 MS. SMITH: I don't think a pure facial  
25 challenge is what we have here because it's very

1 dependent on the facts of his case, and now we're back  
2 to doing an end-run around the state court judgment.

3 All right. The third argument we understand  
4 him to be making is that it's a void judgment for we  
5 believe two separate reasons. First, that the Court had  
6 no authority to award attorney's fees. However, as we  
7 point out in our motion, Part II, Article 73, of the  
8 state constitution grants authority to the Court to make  
9 rules regarding the administration of all courts.

10 Also in preparing for this I did a little bit  
11 more research, and the Supreme Court, the United States  
12 Supreme Court has recognized the inherent authority of  
13 Courts to award attorney's fees for a number of things,  
14 including frivolous conduct and bad faith, which was  
15 what Rule 23 addresses.

16 And so it's within the -- the Supreme Court  
17 has recognized that inherent authority of Courts. A  
18 case I can give you on that is Marx versus General  
19 Revolution Corps, 568 U.S. 371. I did not write down  
20 the year. I apologize for that. I think it was a  
21 fairly recent case.

22 THE COURT: I'm familiar with the case. I am.

23 MS. SMITH: The second reason he argues it's  
24 void is that -- his argument is that for every wrong  
25 there must be a remedy.

1           As we point out, his remedy here is that if he  
2           wants to appeal a state court judgment or order that's  
3           final, his route is to the United States Supreme Court.

4           THE COURT: Which, by the way, you did  
5           petition for cert, didn't you?

6           MR. MARAVELIAS: Your Honor, just on this  
7           limited question before I begin, yes, I did. In fact, I  
8           have a copy. That was recently denied on October 7th.

9           THE COURT: All right. I'm going to give you  
10          all the opportunity to speak you want. Don't worry. I  
11          won't limit you to my questions at all.

12          Go ahead.

13          MS. SMITH: Okay. Regardless of his argument  
14          that that's a 2 percent shot in the dark, that is the  
15          route that is his remedy if he chooses to appeal from  
16          the state court order.

17          And his final argument is that it's not  
18          ongoing, and for that I will rely on our argument in our  
19          papers that it's a final order. There's no further  
20          state court appeal from it, so it is a final decision.

21          The other arguments he raises on the -- he  
22          states a claim against the Court itself that we contend  
23          is barred by the Eleventh Amendment, and Ex Parte Young  
24          does not apply for the reasons we've stated in our  
25          pleadings.

1           In regards to judicial immunity, he hasn't  
2           pointed to anything where there's a pure absence of  
3           judicial authority. He has argued that Judge Lynn's  
4           facial expressions on a number of occasions expressed  
5           some type of personal malice toward him.

6           Even if those were true, it doesn't create an  
7           absence of judicial authority, and the case law we cited  
8           is very clear that judicial authority exists even where  
9           there's evidence of bad will. So we don't believe he's  
10          overcome the hurdle of judicial immunity.

11          THE COURT: Understood. All right.

12          Sir, how do I pronounce your name correctly?

13          MR. MARAVELIAS: Maravelias, your Honor.

14          THE COURT: Maravelias. Just like it's  
15          spelled. All right.

16          All right. I just want to make sure you  
17          understand. You're here pro se. You have every right  
18          to be here pro se.

19          MR. MARAVELIAS: Yes, your Honor.

20          THE COURT: And I wouldn't dream of  
21          interfering with that.

22          I do have to hold you to the rules. You  
23          appear though to be very able to abide by the rules.  
24          You seem to have a very good working knowledge of legal  
25          process and the law, so I'm not that concerned about it.

1 I just want you to understand we do have  
2 rules, the rules of procedure, the rules of evidence.  
3 The rules of evidence don't matter for a hearing like  
4 this, as you know, but the rules of procedure do.

5 The way I try to usually approach this in a  
6 pro se situation is -- I mean, I will enforce the rules  
7 as to both parties, but I try to bend over backwards a  
8 little bit to make sure a pro se litigant isn't tripped  
9 up on a pure technicality in a way that prejudices the  
10 proceedings in a case. Sometimes that's frustrating for  
11 counsel, clients like the state and others, but  
12 sometimes I do that.

13 The bottom line is I'm just trying to tell you  
14 that, you know, I want you to be comfortable, make your  
15 arguments, and not worry that it's a sort of a gotcha  
16 situation if you had some technical noncompliance with  
17 some local rule or something like that. That's not my  
18 intention. My intention is to apply the rules to you so  
19 it's a fair argument but let you do what you want to do  
20 and let you make your arguments you want to make. All  
21 right?

22 MR. MARAVELIAS: Thank you, your Honor.

23 THE COURT: Sure.

24 Before you get started, you know, I'm familiar  
25 with a lot of counsel and litigants that come before the



1 Court, and I'm familiar with Assistant Attorney General  
2 Smith. She's obviously been here many times.

3 Just tell me a little bit about yourself.

4 MR. MARAVELIAS: Your Honor, may it please the  
5 Court, and I want to thank you for that overture. This  
6 is my first time litigating in federal court oral  
7 argument. So if I'm in noncompliance with any  
8 procedures or morals, please feel free to correct me.

9 THE COURT: You're doing fine.

10 MR. MARAVELIAS: Before we get into the legal  
11 merits, to respond to your question, I'm a citizen of  
12 New Hampshire. I've lived here since I was 3 years old.  
13 I had the typical New Hampshire upbringing.

14 First of all, I was home-schooled for my  
15 pre-high school education. I went to Windham High  
16 School. I was the first graduating class there.

17 THE COURT: Yeah. That's a new school, yeah.

18 MR. MARAVELIAS: Yes, sir. It was brand new.  
19 I had a phenomenal education there. I learned about the  
20 same constitutional liberties that I'm putting into  
21 practice right now there.

22 I then went to Dartmouth College, and I  
23 received a good education there. But to be honest, I  
24 was a B student there because I founded my own software  
25 business online.

1 THE COURT: Well, that doesn't mean much.

2 Did you graduate?

3 MR. MARAVELIAS: Yes, sir. 2017.

4 THE COURT: What degree?

5 MR. MARAVELIAS: I was an economics major.

6 THE COURT: Excellent.

7 MR. MARAVELIAS: And then in 2016 I asked to  
8 go out to dinner for the first time in my life, we were  
9 family friends, and her father had this huge explosion  
10 towards me, and he's this rich man in town. He wound up  
11 getting a stalking and restraining order against me  
12 based upon a verifiable falsehood that -- there's an  
13 audio recording, an illegal RSA 570 wiretapping  
14 recording. It's illegal I found out to record your own  
15 conversations --

16 THE COURT: You have to slow down a little  
17 bit. She's having difficulty keeping up with you.

18 MR. MARAVELIAS: My apologies.

19 THE COURT: That's all right. Just speak a  
20 little slower.

21 MR. MARAVELIAS: Yes, sir.

22 The legal relevance is all of this litigation  
23 ironically enough goes back to that incident back in  
24 2016 where this family pursued a patently false stalking  
25 and restraining order against me which still exists to

1 this day.

2 And there are some interesting happenstances  
3 at the New Hampshire Supreme Court that -- I want to  
4 stay very disciplined to this appeal, excuse me, to this  
5 case, but there are concerns that have overlapped into  
6 this case with regards to their blanket affirmances  
7 (sic) and then self-censoring said orders from the  
8 website, sir.

9 They actually -- I did some judicial research.  
10 The New Hampshire Supreme Court since 2018 has been  
11 self-censoring and publishing nowhere their final  
12 dispositions in deviant stalking orders, and over 6,000  
13 such petitions were filed in the year 2018, and they  
14 granted in the year 2018 zero reversals for stalking  
15 orders and a grand total of two reversals for deviant  
16 protection orders.

17 THE COURT: I see. You think that establishes  
18 a problematic pattern?

19 MR. MARAVELIAS: Yes, sir. And I think that  
20 it ties into some of the aspects here that I'll discuss.  
21 I think if I went into further detail about the stalking  
22 matter on the unrelated appeal, that's briefly mentioned  
23 in the procedural history there, I think that would sort  
24 of exceed the bounds of this proceeding. And I'm  
25 already thankful enough for your invitation to give me

1 some background information that I don't want to abuse  
2 that grace that you've given me.

3 So if that's pleasing to you, sir, I would  
4 progress into the legal argument.

5 THE COURT: Yeah. I think -- okay. That's  
6 fine.

7 By the way, you can do it standing, you can do  
8 it sitting, whatever makes you most comfortable. If  
9 you're more comfortable sitting so you can see your  
10 notes or whatever, I have no problem with you speaking  
11 from a seated position.

12 The other thing is this. Look, in oral  
13 argument I try to engage counsel, ask questions, and  
14 I'll do the same with you. I hope I don't give you any  
15 facial expressions or give you an idea that I've  
16 prejudged your case. I haven't prejudged your case at  
17 all. I want to give you a fair and impartial hearing  
18 here today.

19 So, please, if I say something or do something  
20 that gives you distress, just point it out and I'll do  
21 my best to stop. All right?

22 MR. MARAVELIAS: Thank you, your Honor. I  
23 appreciate that.

24 I also openly invite Attorney Smith to  
25 interrupt at whatever time. I understand oral argument

1 is an opportunity for the Court to do service, not just  
2 to repeat your pleadings that you've already read.

3 THE COURT: Sure.

4 MR. MARAVELIAS: So thank you, your Honor.  
5 May it please the Court.

6 I would like to at the outset sort of give  
7 sort of a 300-foot view here that I think there's four  
8 potential dispositions in this motion to dismiss. There  
9 are the extreme cases, denied in full or it's granted in  
10 full, but I think that there are two significant  
11 intermediary dispositions.

12 And in full disclosure I want to completely  
13 make it fully clear that my claim in my amended  
14 complaint for monetary damages against Robert Lynn in  
15 his individual capacity, that's probably the most  
16 assailable claim for relief in my complaint.

17 THE COURT: I think you're right about that,  
18 yeah.

19 MR. MARAVELIAS: And I believe I have a strong  
20 legal argument under the law for the validity of that  
21 claim, but I wanted to point out that there were  
22 intermediary dispositions here where I've failed to show  
23 -- I do agree. I just --

24 THE COURT: So the two extremes are of course  
25 full denial and full grant.

1 MR. MARAVELIAS: Yes, your Honor.

2 THE COURT: What are the two -- just before  
3 you explain them, what are the two intermediary  
4 positions?

5 MR. MARAVELIAS: Assuming that I fail to  
6 establish that the Chief Justice of the New Hampshire  
7 Supreme Court voided his judicial immunity, the Court  
8 will then have to deny my claim for monetary damages  
9 against Justice Lynn.

10 However, my claims for the declaratory relief  
11 as it pertains to what I've called this fraudulent  
12 extortion conspiracy which limits a public citizen's  
13 access to the role of the appellate court and my generic  
14 facial challenge against Rule 23 would remain.

15 The secondary intermediary disposition which  
16 would be even more favorable to the defendants was if I  
17 fail also to show that the Rooker-Feldman doctrine does  
18 preclude the relief that I request in the first and  
19 second prayers for relief of my amended complaint, which  
20 is for declaratory relief on all prevalent counts and  
21 injunctive relief.

22 In such a case only the facial challenge  
23 against Rule 23 would remain. Perhaps that's a good  
24 thing for me to open with.

25 I, off the bat, fully agree with Attorney

1 Smith that in order for me to bring a facial challenge  
2 under Rule 23, if and assuming that my other as applied  
3 challenges are precluded, you know, set aside by the  
4 Rooker-Feldman doctrine, I agree that that has to be  
5 distinct and divorced from the particular facts and  
6 circumstances of my case.

7 THE COURT: Okay.

8 MR. MARAVELIAS: But the evident fact is my  
9 amended complaint does not refer to specific facts and  
10 circumstances when it comes to my facial challenge at  
11 the end.

12 And for judicial economy instead of filing two  
13 separate lawsuits, one about probably the biggest thing  
14 I want to get into, the Rooker-Feldman issue with the  
15 particular ongoings with me, and another lawsuit because  
16 I have standing to bring that facial challenge, for the  
17 purposes of judicial economy was worthwhile to combine  
18 those, also seeing if they were borne out of the same  
19 transaction of occurrences. So that's why I combined  
20 those there.

21 So I believe that the First Circuit's recent  
22 clarification in -- I believe it was -- it was the  
23 Massachusetts case. It was I think Tracey versus  
24 Massachusetts. That is distinguishable, I think that's  
25 the case that Attorney Smith was citing, because in that

1 particular case I think that there was an attempt to  
2 bring a facial challenge that was not divorced from the  
3 particular facts and circumstances of what happened with  
4 that particular litigant. It was challenging to go  
5 heads up against a final state court judgment.

6 With that in mind, I would like to proceed  
7 first with the Rooker-Feldman question. It seems like  
8 that's what is probably the most contentious issue here.

9 THE COURT: I think it is. And I'm going to  
10 be honest with you, and I want to hear your argument,  
11 but I do think that presents a big problem for not all  
12 your claims but a good chunk of them, so you should  
13 address it.

14 MR. MARAVELIAS: Thank you, your Honor.

15 I think the first important principle to  
16 elucidate understanding why my claim survives this  
17 motion to dismiss is understanding the difference  
18 between original jurisdiction and appellate  
19 jurisdiction.

20 So assuming that the New Hampshire Supreme  
21 Court's order that awarded \$4,900 to my opponent months  
22 after this appeal was completely adjudicated on the  
23 merits and done, assuming that that is not a void  
24 judgment, the relief I am requesting is not seeking an  
25 appellate reversal of that.



1 Federal courts have recognized that there's a  
2 difference between obtaining a declaratory adjudication  
3 that a certain act, and in particular the enforcement,  
4 the prospective potential enforcement of an order would  
5 be a violation of federal constitutional rights. They  
6 have distinguished between that, declaratory relief, and  
7 a different prayer for relief which would amount to an  
8 appellate reversal.

9 As you can see in my amended complaint, there  
10 is very, very specifically and intensionally no request  
11 that this Court command an officer of the state supreme  
12 court to issue an order undoing their order dated March  
13 29, 2019.

14 The order dated March 29, 2019, was an order  
15 which patently deprived me of federal constitutional due  
16 process protections because they did not afford me any  
17 opportunity whatsoever to respond to this fraudulent  
18 itemization. And there's case law, very persuasive case  
19 law, that distinguishes between --

20 THE COURT: What prevented you? I mean, there  
21 was a motion for it. There was a motion for  
22 reconsideration. What stopped you from presenting  
23 anything you wanted to present?

24 MR. MARAVELIAS: Here's why, your Honor.  
25 Because procedurally there was an order that just

1 blanket granted in one sentence the request for  
2 appellate attorney's fees.

3 THE COURT: Yes.

4 MR. MARAVELIAS: Let's forget about -- let's  
5 assume -- let's just forget about commenting on how  
6 unjust that was. Let's just assume that that's true.

7 THE COURT: Yeah.

8 MR. MARAVELIAS: And then -- that order was  
9 dated on February 21st. In that order the defendants,  
10 the New Hampshire Supreme Court, signaled the opposing  
11 party's counsel to itemize the fees he is seeking by  
12 March 4th.

13 The New Hampshire Supreme Court has a rule,  
14 it's Rule 22, that motions for reconsideration must be  
15 within ten days of the date of the order.

16 I could not have possibly filed a -- I could  
17 not have known in the future what the opposing party was  
18 going to enumerate in their expenses in their  
19 outrageously surreptitious and metastasized itemization  
20 that went from the \$500 limited sanction -- it was all  
21 about -- the relief granted was just for one allegedly  
22 frivolous motion to strike, and then all the sudden this  
23 strident attorney completely itemizes every --

24 THE COURT: No, I looked at their request for  
25 fees. They didn't ask just for a motion to strike.

1 They asked for the whole appeal.

2 MR. MARAVELIAS: It's in paragraph 23 of their  
3 motion, your Honor. I highlighted the paragraph.

4 THE COURT: There's other parts of their  
5 motion that make it clear that they're asking for relief  
6 from the entire -- to have their fees paid for the  
7 entire appeal.

8 I realize there are paragraphs that refer only  
9 to motion to strike, but I mean, I can cite you the  
10 paragraphs, too. I think you know them better than I do  
11 though.

12 Are you saying that there's no way to  
13 interpret that as a request for all their fees for the  
14 appeal? Because I think there is.

15 MR. MARAVELIAS: I would say that I would, but  
16 even if I'm wrong, I have additional fallback positions.

17 THE COURT: Yeah.

18 MR. MARAVELIAS: Number one, assuming that the  
19 language was clear that they were seeking fees for the  
20 entire appeal, I still have a constitutional due process  
21 right to be heard in response to their itemization still  
22 because I have to have a say here.

23 The Constitution, the Fourteenth Amendment,  
24 requires a state will not exercise control of my  
25 property without a reasonable opportunity to be heard.

1           THE COURT:   What stopped you from contesting  
2   your itemization?

3           MR. MARAVELIAS:   The New Hampshire Supreme  
4   Court's denial of my motion and denial for an  
5   evidentiary hearing.

6           I cited case law in my amended complaint where  
7   a question of law -- where a question revolves around a  
8   matter of fact, did I behave frivolously, was my appeal  
9   frivolous.

10          There are thousands of these petitions filed,  
11   many appeals.   I was probably the only person in the  
12   state of New Hampshire ordered to pay for filing an  
13   unsuccessful restraining order petition.   That's an  
14   extremely untenable position.

15          In fact, my original state court case --

16          THE COURT:   You weren't ordered to pay for  
17   that.   You were ordered to pay for the fees on appeal.

18          MR. MARAVELIAS:   I was both, your Honor.

19          THE COURT:   Both?

20          MR. MARAVELIAS:   I was both.

21          And the fact that the New Hampshire Supreme  
22   Court in the underlying matter upheld the \$9,000 I had  
23   to pay my attorney, excuse me, the opposing party's  
24   attorney, even though the trial court, the local judge,  
25   included a cost in the \$9,000 which was

1 unquestionably --

2 THE COURT: Outside the scope, yeah.

3 MR. MARAVELIAS: -- outside the scope. So  
4 that renders a disposition I received at the New  
5 Hampshire Supreme Court at least partially successful,  
6 because that small extraneous cost which was  
7 undisputedly in error, and the opposing party actually  
8 waived that, so that renders my appeal patently as a  
9 matter of law nonfrivolous.

10 However, let's assume that it could be argued  
11 if I didn't have that aspect on my side that it is  
12 potential my appeal was frivolous, which I'm the only  
13 appellate in the 143-year modern history of the New  
14 Hampshire Supreme Court to be ordered to pay an  
15 opponent's, a pro se appellant, entire fees, but let's  
16 assume. I still had a constitutional right under the  
17 Fourteenth Amendment to present my evidence, mine to be  
18 heard, on the aspect of not being frivolous and to  
19 contest the itemization.

20 When I raised those federal constitutional  
21 issues, they ignored them. They did not adjudicate them  
22 positively or negatively.

23 And there's an interesting piece of case law  
24 that Attorney Smith cited. She said that generally it's  
25 assumed that factfinders perform other requisite

1 findings of fact to support a judgment.

2 THE COURT: Right.

3 MR. MARAVELIAS: However, when the original  
4 tort feisor is the state's highest court exercising  
5 original factfinding jurisdiction, that does violate the  
6 equitable maxim because if it is acceptable for trial  
7 court judges to command away people's rights without  
8 a -- people's monetary property without a right to trial  
9 by jury -- if you sued me for \$9,000, oh, you know,  
10 frivolous litigation, blah, blah, blah. If you sued me  
11 for \$9,000, that goes to court, that goes to a trial,  
12 and I would have a right to a trial by jury on such a  
13 claim.

14 A court that is supposed to fulfill only an  
15 appellate function cannot simply cite the bald assertion  
16 that a certain rule exists without making particularized  
17 finding of facts and affording the litigants a fair and  
18 full opportunity to be heard on those facts. Especially  
19 where no higher court in the state system exists, A, and  
20 especially whereas the United States Supreme Court in  
21 its certiori --

22 THE COURT: I have to ask you this. Do you  
23 really think the United States Supreme Court is going to  
24 tell the highest courts of every state in this nation  
25 that it can't assess costs and fees against vexatious or

1 bad faith litigants without making specific findings  
2 regarding every dollar or charge or itemized expenditure  
3 on litigation? That just doesn't seem likely to me at  
4 all.

5 MR. MARAVELIAS: I didn't go for that bold of  
6 an argument.

7 THE COURT: Okay.

8 MR. MARAVELIAS: The argument can be much more  
9 conservative. The argument can simply be that an  
10 appellate court when it attempts to exercise original  
11 jurisdiction and make an appropriation of someone's  
12 monetary property, you have to be granted a meaningful  
13 opportunity to be heard.

14 And by denying my evidentiary hearing and by  
15 commanding the opposing party to -- or allowing them to  
16 file an itemization after my ten days, which is my only  
17 opportunity to file a motion for reconsideration, I was  
18 deprived of any opportunity to respond to the content of  
19 that itemization and to dispute.

20 THE COURT: Why couldn't you just file an  
21 objection after they filed their itemized list, and then  
22 once the order came of the -- once the order to pay  
23 came, right, the order for attorney's fees, you could  
24 move to reconsider that and submit evidence that -- I'm  
25 struggling with the idea that you didn't have an

1 opportunity to be heard and noticed. You did. I mean,  
2 I don't think the rules barred you from objecting to  
3 either, A, the itemized list, or B, the order that  
4 resulted. You could have contested that.

5 MR. MARAVELIAS: I understand the distinction  
6 you're trying to make. Rule 22 of the New Hampshire  
7 Supreme Court states that consecutive motion  
8 considerations will not be even heard.

9 Now, I understand you can be hyperliteral and  
10 say that, well, the order that was technically approving  
11 the granting of the fees is a distinct order. However,  
12 I will say if that's true, a person of reasonable  
13 intelligence reading the one sentence cursory orders of  
14 the New Hampshire Supreme Court would not necessarily  
15 come to the understanding and that enters a territory of  
16 vagueness that you cannot reasonably expect a pro se  
17 litigant to entertain.

18 Number two, I would --

19 THE COURT: Yeah, that goes to your facial  
20 challenge, but go ahead.

21 MR. MARAVELIAS: Yes.

22 Number two, I would also say that regardless  
23 in any case, even though I did submit the evidentiary  
24 materials, my original objection to the motion for  
25 attorney's fees, that they denied that, excuse me, that



1 they did not even look at that or consider the fact that  
2 my appeal was patently nonfrivolous because of the small  
3 amount that --

4 THE COURT: That part they waived?

5 MR. MARAVELIAS: Yes.

6 So that in and of itself renders any legal  
7 holding, which there was none, that my appeal was  
8 nonfrivolous false.

9 Assuming that the New Hampshire Supreme Court  
10 made a false holding that was a valid judgment, which I  
11 dispute -- I want to talk about that in a second.  
12 Assuming it was a valid judgment, how come every single  
13 other litigant against whom a civil judgment for a fine  
14 was levied has a right, a right to an appeal to a higher  
15 court? This is where the equitable maxim comes in.

16 THE COURT: We don't have a higher court. The  
17 state of New Hampshire doesn't have a higher court.

18 MR. MARAVELIAS: Exactly. That's my argument  
19 for why this Court, even if it is like an actual  
20 judgment that would be subject to the Rooker-Feldman  
21 doctrine, which I'm going to argue it's not, even if it  
22 were, the principles of federalism behind animating the  
23 Rooker-Feldman doctrine are not violated when the courts  
24 have not in and of themselves established a proper  
25 appellate process that every single other litigant gets

1 to enjoy when fines and fees are levied against them to  
2 a normal civil lawsuit, not by filing a motion in a dead  
3 appeal -- this appeal was done for months, that's  
4 another aspect -- but by filing a claim in civil court,  
5 the lower court.

6 That is why the equitable maxim --

7 THE COURT: Slow down.

8 MR. MARAVELIAS: -- compels this Court to hear  
9 the claim under the federal constitution because the  
10 current arrangement of the United States Supreme Court  
11 certiorari jurisdiction has been held not to be  
12 repugnant against the due process rights that every  
13 citizen enjoys only because of the understanding that if  
14 something potentially violates your rights from state  
15 court, the state courts are afforded full trust in faith  
16 and credibility under the full faith and credit clause  
17 to adjudicate those federal claims to the Constitution  
18 through an appellate process.

19 And here in my case we have an extraordinarily  
20 rare, unprecedented in my research, instance where in  
21 their subjective frustration with me, and I have lots of  
22 objective proof that in the retaliation claim they  
23 usurped a months finished appeal case which they  
24 adjudicated and brought to a final order on the merits  
25 without the slightest assertion of triviality. Neither

1 the opposing party, neither the trial court warranted  
2 this to be a frivolous appeal, but they denied me the  
3 same rights that every other person in the state courts  
4 would have been given if a claim against the monetary  
5 property were made in an appropriate forum that given  
6 the extraordinary procedural realities of this chain of  
7 events I did not have.

8 And that's assuming it is a final state court  
9 judgment. That's why the Rooker-Feldman doctrine given  
10 its philosophy. However, that -- I would appreciate --  
11 I think it would be easier for all of us if we didn't  
12 have to go down that route because that would  
13 potentially require a novel interpretation of the  
14 Rooker-Feldman --

15 THE COURT: Go down what route?

16 MR. MARAVELIAS: The route --

17 THE COURT: Of finality?

18 MR. MARAVELIAS: No. The route -- well,  
19 that's a separate aspect, but the route of -- assuming  
20 that I'm complaining about actual valid state court  
21 judgments that are judgments and are not void, but  
22 however, understanding that the jurisdictional  
23 underpinning and philosophy of the Rooker-Feldman  
24 doctrine does not apply in this case when there is no  
25 appellate recourse in the state courts because it's the

1 state's highest court that went from acting as --  
2 exercising appellate jurisdiction to original  
3 jurisdiction.

4 Now I'll take it even a step further and say  
5 you don't even have to consider that argument because --

6 THE COURT: Slow down.

7 MR. MARAVELIAS: -- the orders that I seek  
8 declaratory relief violated my constitutional rights are  
9 not state court judgments, nor are they final state  
10 court judgments.

11 First, let me talk about the judgments. The  
12 legal --

13 THE COURT: Aren't they judgments about  
14 whether you litigated in bad faith? How are they not  
15 final? What's not final?

16 MR. MARAVELIAS: So there's finality and the  
17 judgments. I'll address the finality first.

18 So the Rooker-Feldman doctrine finality test  
19 was clarified by the First Circuit in the case from  
20 Puerto Rico, and there's three prongs in my memorandum.  
21 Both parties are seeking further actions. We have  
22 pending motions for contempt against each other on the  
23 docket there.

24 THE COURT: If that were the law, there would  
25 never be a final judgment. Filing a post-trial

1 post-judgment motion doesn't make a judgment any less  
2 final.

3 MR. MARAVELIAS: Here's the distinction. When  
4 it's typically -- with the Rooker-Feldman doctrine it's  
5 about final state court judgments on the merits of a  
6 legal case, and each court has a rule, trial courts  
7 especially, that, okay, after 30 days --

8 THE COURT: You have to -- look, she can't  
9 keep up.

10 MR. MARAVELIAS: Sorry.

11 THE COURT: I know, but respectfully, it's  
12 about -- it's got to be about the twentieth time.

13 You're going to have to speak slower or I'm  
14 going to have to decide this on the papers. She can't  
15 get hazard pay, right? I don't want anyone to get hurt  
16 doing this.

17 You've got to dial it down somehow. And I  
18 mean that respectfully because you're very articulate,  
19 and I speak too fast all the time in court so I get it,  
20 but I can't have you even unintentionally abusing the  
21 court reporter. You've got to take it slow.

22 Now, here's the thing. It is a final  
23 judgment. They moved for attorney's fees on your --  
24 based on your conduct in the court. You had an  
25 opportunity to object. That's the decision. That's how

1 it works.

2 The fact that there's -- it happens here all  
3 the time. We get motions all the time forever on cases  
4 that are closed. It doesn't make them any less final.

5 The supreme court had litigation over your  
6 conduct, a motion was filed, an objection was filed, the  
7 Court makes a decision. There's a motion for  
8 reconsideration. There's an opportunity to argue about  
9 it. There's a decision.

10 I can't imagine why you think that lacks  
11 finality.

12 MR. MARAVELIAS: So there's two aspects.  
13 Let's assume it's final. It's on a judgment. Rule 23  
14 particularly says, as a matter of discretion but not of  
15 right. In Blacks Legal Dictionary the definition of a  
16 judgment is a pronouncement by a court of law upon the  
17 liabilities and rights of the individual parties.

18 Since Rule 23 specifically --

19 THE COURT: You don't think -- I know it's a  
20 matter of discretion, but there's lots of matters of  
21 discretion. The rules establish a right to recover  
22 attorney's fees for bad faith frivolous litigation.  
23 It's an entitlement that one may request and the Court  
24 may grant. It's certainly a right that's afforded to a  
25 litigant to seek that relief, and it was afforded in

1 this case. The fact that it required the exercise of  
2 discretion doesn't make it any less a judgment.

3 What's the authority for that proposition?

4 MR. MARAVELIAS: Blacks Legal Dictionary.

5 THE COURT: Yeah, I get it. Okay.

6 MR. MARAVELIAS: Let's assume I fail on that  
7 argument. Let's assume it was a judgment and it was  
8 final. I still would have a right to relief in this  
9 court because of the extraordinary nature of not having  
10 an appellate recourse, A, and because of the nature that  
11 I was not afforded an evidentiary hearing.

12 THE COURT: What do you mean you don't have  
13 any appellate recourse? You filed for a cert. petition  
14 in the United States Supreme Court.

15 MR. MARAVELIAS: Yes, but that doesn't satisfy  
16 the equitable maxim because it's not an appellate remedy  
17 by right. So that introduces an equal protection issue  
18 with the Fourteenth Amendment that --

19 THE COURT: Is this only because the supreme  
20 court vis-a-vis a motion for fees is like a factfinding  
21 court, because under that theory -- there is no appeal.  
22 It's the highest court in this state. They issue  
23 rulings constantly to which there is no recourse. It  
24 happens all the time.

25 That doesn't mean a Rooker-Feldman doctrine

1 doesn't apply to their decisions. I don't understand  
2 the argument. There's no appeal from the New Hampshire  
3 Supreme Court, I know. There is appeal from the New  
4 Hampshire Supreme Court for example on habeas corpus.  
5 That's because the United States Congress has created  
6 that right. They haven't done that here.

7 Do you understand what I'm saying?

8 MR. MARAVELIAS: I want to argue that they  
9 have under 20 U.S.C. 1331. I think an original federal  
10 question jurisdiction requires that the original tort  
11 feisor violated my due process rights under color of  
12 state law. So I would argue that Title 42 Section 1983  
13 provides me a vehicle to pursue civil litigation again.

14 THE COURT: So any state court litigant who  
15 pursues relief in violation of state law who doesn't  
16 prevail can have it revisited in federal court? That's  
17 your argument?

18 MR. MARAVELIAS: No.

19 THE COURT: No?

20 MR. MARAVELIAS: I would say only if they did  
21 not have -- if it's a rare case where they had  
22 absolutely no appellate recourse in the state court to  
23 those harms, then I would say that that's prohibited.  
24 Your only chance is discretionary review under the  
25 United States Supreme Court certiorari jurisdiction.



1 THE COURT: Okay.

2 MR. MARAVELIAS: But since there was an  
3 original federal question that no New Hampshire higher  
4 court ever could review, that is why this court's  
5 original federal question jurisdiction is not confounded  
6 by the Rooker-Feldman doctrine.

7 And I have separate and further grounds, for  
8 instance, disputing the definition of a judgment given  
9 Rule 23's specific language not as a matter of right.

10 THE COURT: Yeah.

11 MR. MARAVELIAS: And on the non-finality and  
12 on a couple other things, such as the jurisdictional  
13 argument which we didn't even get into.

14 THE COURT: Look, the way I look at your  
15 arguments -- you've got four arguments regarding  
16 Rooker-Feldman basically. Not final, right? Not a  
17 judgment or judicial in nature. It's void -- it's not  
18 just voidable but void from the get-go, and then this  
19 idea that you have no remedy. Those are all -- as far  
20 as I can understand your papers, those are arguments as  
21 to why Rooker-Feldman doesn't bar your claim.

22 Am I right?

23 MR. MARAVELIAS: That's correct. And the fact  
24 that there's ongoing action sought in that document.

25 THE COURT: Ongoing actions what?

1 MR. MARAVELIAS: Sought in that state supreme  
2 court docket.

3 THE COURT: Well, that's what you mean by not  
4 final?

5 MR. MARAVELIAS: Right.

6 THE COURT: Yeah. Okay.

7 Listen, I think I understand your  
8 Rooker-Feldman. Talk to me about judicial immunity.

9 MR. MARAVELIAS: Okay.

10 So the panoply of 1983 case law is very clear  
11 that judicial immunity attaches for monetary relief. So  
12 there's no argument that if I fail to demonstrate that  
13 Justice Lynn voided his judicial immunity, that my  
14 claims for monetary damages must as a matter of law  
15 fail. I agree with that.

16 THE COURT: Okay.

17 MR. MARAVELIAS: However, assuming that  
18 judicial immunity does attach, it does not preclude my  
19 claims for declaratory or injunctive relief.

20 Now, the defendants have cited case law --

21 THE COURT: Regarding the facial validity of  
22 the rule? Is that what you're talking about?

23 MR. MARAVELIAS: Not just the facial validity  
24 but also --

25 THE COURT: The Court's action in this case?

1 MR. MARAVELIAS: Yes. My declaratory relief,  
2 injunctive relief preventing the enforcement.

3 So the United States Supreme Court has  
4 recognized the distinction between the enforcement  
5 aspect and the commanding a judicial officer to rule  
6 different, right? That's not touching that. They don't  
7 have to do anything. They just have to refuse -- they  
8 just have to, by the relief that I'm requesting, refrain  
9 from bringing a criminal prosecution against me by  
10 contempt of court which would violate my constitutional  
11 protections under the federal constitution of the  
12 Supremacy Clause.

13 So with regards to judicial immunity, there is  
14 some conflict that you might notice if you looked at the  
15 case law, and Attorney Smith did cite one case from 2004  
16 in this court which was Macdonald versus Broderick which  
17 did -- and there is a quote in there. The defendants  
18 are arguing that basically judicial immunity is not just  
19 immunity from monetary damages but it's complete  
20 immunity from suit, even declaratory injunctive relief,  
21 and my position is that's just simply not consistent  
22 with the actual status of 1983 case law. It's not  
23 consistent with the United States Supreme Court's ruling  
24 in Pulliam. I believe I have that case. It's not  
25 consistent with the United States Supreme Court ruling

1 in the Supreme Court of Virginia case, the consumer --  
2 that's the one I have cited there. It has been held,  
3 and in fact the federal legislator has acknowledged  
4 implicitly in the statute 1983 that declaratory relief  
5 can issue against state judicial actors, not federal.  
6 That's like Bivens actions and stuff like that. That is  
7 just simply not an accurate contention.

8 Now, insofar as there's a persuasive quote  
9 from Broderick versus Macdonald from this court in 2004,  
10 number one, that case is distinguishable because Mr.  
11 Macdonald made the error of suing the Chief Justice of  
12 the Supreme Court of New Hampshire solely in his  
13 judicial capacity. That creates obviously a situation  
14 in the Ex Parte Young doctrine where you are really not  
15 holding that judge accountable for his individual acts  
16 which are sort of separating him from the sovereign  
17 entity.

18 I think that that gets us to the Eleventh  
19 Amendment argument. I want to keep it on the judicial  
20 immunity. The end all be all is that judicial immunity,  
21 assuming it attaches, does not bar claims for  
22 declaratory and/or injunctive relief.

23 THE COURT: I get the picture there.

24 MR. MARAVELIAS: Secondarily, judicial  
25 immunity does not apply at all. I have to argue that.

1 That's why I put the monetary relief. I spent a lot of  
2 time and money on this. I want be reimbursed for that.

3 Simply, the defendants voided their judicial  
4 immunity when they separately acted outside the  
5 jurisdiction and took acts that amounted to nonjudicial  
6 acts.

7 We talked about the lateral argument that came  
8 up in the Rooker-Feldman. This is actually very  
9 connected to the Rooker-Feldman because if I could show  
10 that the judicial immunity was voided under either of  
11 these two possibilities, that would also automatically  
12 resolve the Rooker-Feldman issue because the case law is  
13 clear Rooker-Feldman does not apply to void judgments  
14 that were actually jurisdictional or were nonjudicial.

15 So I think I already said my argument for why  
16 it wasn't judicial.

17 THE COURT: You did.

18 MR. MARAVELIAS: Because the rule says it's  
19 all a matter of right.

20 It's not -- it's actually jurisdictional  
21 furthermore because there's -- so there's two aspects of  
22 authorization for the existence and powers of the New  
23 Hampshire Supreme Court, statutory -- RSA 494 which  
24 clarifies it's an appellate court. It's not a court  
25 which -- I mean, yes, if there's an extraordinary case,

1 you can petition for original jurisdiction. That's not  
2 what happened here, right?

3 THE COURT: Yep.

4 MR. MARAVELIAS: Typically in New Hampshire if  
5 you have a claim against someone if they injured you by  
6 filing a frivolous appeal or imagine some conduct, you  
7 make either a small claims, or, if it's over a certain  
8 amount --

9 THE COURT: Slow down, please.

10 MR. MARAVELIAS: -- in the superior court.

11 So when it came to what happened in this case,  
12 it -- yeah, so the jurisdiction. The New Hampshire  
13 Supreme Court is allowed by constitutional enactments  
14 that were amended in the '60s and '70s, not Article 73  
15 but 62 -- so 72(a) and 73(a) that said, well, the Chief  
16 Justice of the New Hampshire Supreme Court is able to  
17 create rules, such as how do we handle frivolous  
18 litigants, and making the rules that are with the  
19 consensus of the majority of the justices for overseeing  
20 the administration of the courts.

21 And I'm in full agreement that every state  
22 court, as far as I know, has some sort of rule about  
23 frivolous conduct, and those rules are very, very  
24 distinguishable from the New Hampshire Supreme Court's  
25 defective constitutional facial rule, that's separate,

1 and let's assume that that's completely valid and  
2 jurisdictional.

3 Well, what happened in this case was not even  
4 an exercise of Rule 23, because Rule 23 clearly states  
5 that there has to be -- after a finding that the appeal  
6 was frivolous or in bad faith, the Court can award  
7 attorney's fees.

8 Well, there was no finding, and the New  
9 Hampshire Supreme Court negated their ability to make  
10 such a finding by failing to make any remote suggestion  
11 that my appeal itself was frivolous. Even if it did,  
12 that would be repugnant to the Supremacy Clause of the  
13 United States Constitution if the New Hampshire  
14 Constitution allowed the state supreme court to  
15 selectively penalize certain state appellants for their  
16 only state appellate recourse simply because it makes a  
17 bald assertion, unqualified and even without the  
18 litigant being -- a full opportunity to be heard, that  
19 his appeal, which was patently necessary, was frivolous  
20 or in bad faith.

21 So since they never made --

22 THE COURT: What do you mean patently  
23 necessary?

24 MR. MARAVELIAS: That's the reference. It was  
25 patently necessary and not in bad faith, my appeal,

1 because of that extra cost in the lower case matter.

2 So they waived that cost. I did enjoy limited  
3 success on that appeal. There was a cost --

4 THE COURT: I'm just curious, and I don't  
5 think this matters, but at the lower court level did you  
6 ever challenge that extra outside of the time frame  
7 cost? Did you do a motion for reconsideration or --

8 MR. MARAVELIAS: Oh, yes. At the lower trial  
9 court level when the judge, A, made up a nonexistent New  
10 Hampshire law case supporting the attorney's fees award.  
11 This is different. This is the original attorney's fees  
12 award for my restraining order petition which was very  
13 -- completely factually supported.

14 I just want to add, to me it's very clear that  
15 there's a large degree of pro se lawyer bias in the New  
16 Hampshire trial courts, but take that for what it's  
17 worth.

18 I did a motion for reconsideration. I even  
19 pointed out to a lower trial court New Hampshire  
20 judge --

21 THE COURT: Slow down, please. Go ahead.

22 MR. MARAVELIAS: -- that, hey, even if this  
23 restraining order petition was frivolous or patently  
24 unreasonable, whatever, pick your word, bad faith, the  
25 other party is seeking a cost that was incurred before I



1 ever filed said petition. It was like these fees for  
2 these transcripts or documents from a related case but  
3 before.

4 So in order -- the only possible way for me to  
5 not be wrongly deprived of that money, even assuming my  
6 conduct was frivolous and bad faith from the get-go,  
7 would be to file an appeal with our state's only  
8 appellate court. Even assuming that I engaged in  
9 frivolous conduct, that finding itself, that legal fact  
10 as a matter of law prevents the New Hampshire Supreme  
11 Court from penalizing me for exercising my right, my  
12 only right. Again, where there is a wrong, there must  
13 be a remedy. That trial court wrongly ordered me to pay  
14 costs that existed before I ever initiated that case,  
15 even assuming I initiated that case in bad faith and  
16 frivolous. Thus, the New Hampshire Supreme Court has  
17 waived its opportunity as a matter of law to pronounce  
18 my entire appeal as frivolous.

19 And as a related matter, if the New Hampshire  
20 Supreme Court by making passing reference to a rule it  
21 never formally implemented nor even allowed the  
22 opportunity to have an evidentiary hearing and a fair  
23 dispute about, if it is allowed to arbitrarily command  
24 away these large sums of money that litigants don't come  
25 to supreme court anticipating that they could pay the

1 other side's fees, because I'm the first person in the  
2 whole 143 year history, modern history, of the New  
3 Hampshire Supreme Court as its presently organized, not  
4 the supreme court adjudicators since 18 whatever, to be  
5 ordered, who's pro se, to pay an opposing party's whole  
6 fees, and I asked --

7 THE COURT: How do you know that?

8 MR. MARAVELIAS: Well, because I use Google.  
9 They have very -- I can't say with certainty.

10 THE COURT: No, you can't. Look, I get it.

11 MR. MARAVELIAS: They have catch phrases. So  
12 Rule 23 comes up rarely. When it does come up, I put,  
13 like, Rule 23 in quotes, New Hampshire Supreme Court in  
14 quotes. You're right. I can't say for certain.

15 THE COURT: You may very well be right. You  
16 may be the only one in history.

17 I'm just curious though. I mean, I don't know  
18 the facts of your case. I know what you've told me. I  
19 read your complaint, and I'll admit I overlooked some  
20 things because there are certain things about today's  
21 presentation that surprised me but -- I don't know. You  
22 don't walk away from this entire experience thinking  
23 that maybe you weren't really in the right place in this  
24 litigation?

25 MR. MARAVELIAS: Absolutely not, your Honor.

1 Are you referring to the original trial court matter?

2 THE COURT: No. I'm sort of referring to the  
3 whole experience. It didn't go well for you like at any  
4 level.

5 MR. MARAVELIAS: No, your Honor. I have  
6 complete 100 percent knowledge -- and there's actually a  
7 separate lawsuit in this court's docket.

8 THE COURT: I'm aware of it. I'm aware of it.

9 MR. MARAVELIAS: Yeah, same trial court judge.  
10 I am completely, so far as you asked, a hundred percent  
11 sure that --

12 THE COURT: You feel that you're -- you feel  
13 like you were within your rights to be making these  
14 claims because you feel like you were in the right from  
15 day one?

16 MR. MARAVELIAS: Absolutely, your Honor. I  
17 feel like I've had stolen about \$14,000, and only the  
18 \$4,700 I am claiming in this court.

19 I'm not asking this Court -- again, I'm not  
20 asking this Court to overturn the \$9,000 underlying, as  
21 wrong as it was.

22 THE COURT: I know.

23 MR. MARAVELIAS: I recognize I can't do that.  
24 I admit the Rooker-Feldman doctrine prevents me. And  
25 when the United States Supreme Court denied my petition

1 the other day, that's done. That \$9,000 is gone. It's  
2 a lot of money for a man who is very young. And I  
3 already paid that, by the way, but I refuse to pay the  
4 \$4,700 because the United States Supreme Court has  
5 clarified that void judgments there's, unconstitutional  
6 judgments, there's no obligation to pay them.

7 I'm hoping for an adjudication on the merits.  
8 And I know that the New Hampshire Supreme Court has been  
9 very -- they I think indirectly have admitted guilt by  
10 doing nothing on the docket since May. Their attorney  
11 filed a motion for contempt against me since I only paid  
12 him \$700 so far. It's all I could afford in the  
13 meantime. \$600?

14 THE COURT: Who represented the other side on  
15 appeal?

16 MR. MARAVELIAS: Simon R. Brown, Esquire,  
17 Preti Flaherty. And, you know, from my perspective  
18 there was a request for relief, fees associated with the  
19 motion to strike. The prayer for relief in his motion  
20 said the above requested relief. There was a vague in  
21 general question about all of it is frivolous, but there  
22 was a specific prayer, "Insofar as Paul Maravelias's  
23 motion to strike was frivolous, Mr. DePamphilis should  
24 be awarded fees in connection with having to respond to  
25 it."

1           And all the sudden surreptitiously, without  
2   any knowledge or forewarning or notice to me, this thing  
3   metastasized into \$4,900 of appeals for a six-month  
4   period. The majority of which was incurred before I  
5   even ever filed this allegedly frivolous motion.

6           So the motion for -- the attorney's fees  
7   request in that state court appellate case came in when  
8   I filed a motion to strike the appellate brief because  
9   if you look at the appendix, they've blurred out certain  
10   text messages. So it was completely not -- they even  
11   admitted, oh, yeah, sorry.

12           So it was nonfrivolous, but the request came  
13   in at a certain time when I filed the motion to strike,  
14   and now I'm being told that I have to pay fees that the  
15   other party incurred weeks and months before I even  
16   filed my allegedly frivolous motion.

17           So going back to your original question, your  
18   Honor, I have no doubt in my mind that I'm in the right  
19   place. I have no doubt in my mind that I have a right  
20   to a remedy.

21           THE COURT: But they waived that claim on  
22   appeal.

23           MR. MARAVELIAS: I'm sorry, your Honor?

24           THE COURT: Didn't they waive the claim on  
25   appeal to the fees incurred before --

1 MR. MARAVELIAS: Sorry for being ambiguous.

2 They waived -- so that was different.

3 THE COURT: All right.

4 MR. MARAVELIAS: So in the appellate fees, the  
5 4,900, this thing, the 4,900, over half of that is like  
6 the fees for them to write their appellate brief which  
7 predated my allegedly frivolous appellate case act of  
8 filing a motion to strike in the New Hampshire Supreme  
9 Court.

10 THE COURT: Oh, okay.

11 MR. MARAVELIAS: So the original 9,000 was --

12 THE COURT: We're just going to have to agree  
13 to disagree on that. I don't view their motion for fees  
14 as being restricted to your motion to strike. I  
15 understand your argument. I just don't accept it.

16 MR. MARAVELIAS: Okay.

17 THE COURT: All right. Well, okay. So you've  
18 told me about judicial immunity. You've told me a lot  
19 about Rooker-Feldman.

20 Is there anything else you want me to know? I  
21 have a couple more questions for Attorney Smith, but is  
22 there anything else you want me to know?

23 MR. MARAVELIAS: Yes, your Honor. Just very  
24 briefly on the Eleventh Amendment issue.

25 THE COURT: Yeah.

1 MR. MARAVELIAS: My position is the Ex Parte  
2 Young allows me to sue --

3 THE COURT: You've got to slow down, man.

4 MR. MARAVELIAS: Sorry, your Honor.

5 THE COURT: It's okay.

6 MR. MARAVELIAS: My position is that the  
7 Ex Parte Young doctrine does permit suit against state  
8 judicial actors for declaratory and injunctive relief to  
9 bring them into compliance with federal law.

10 However, the Court doesn't even need to  
11 consider that because, as I briefed in my objection to  
12 the defendants' motion to dismiss, which I don't think  
13 that they replied to in their reply, in this particular  
14 case, when the state exercises a monetary assessment,  
15 which is the argument, assuming the defendant is the  
16 state of New Hampshire, which I dispute that, assuming  
17 that there is a legal equivalence, well, the state of  
18 New Hampshire consents to being sued in that case. And  
19 I cited the case law.

20 And there's also case law that basically  
21 waives the Eleventh Amendment claim if there's an  
22 allegation that there was a determination that violated  
23 the federal due process. So I think that the Eleventh  
24 Amendment can be -- I think that this comes to the  
25 Rooker-Feldman and to the judicial immunity.

1 THE COURT: All right.

2 Attorney Smith, let me ask you a question. If  
3 someone has a claim against the New Hampshire Supreme  
4 Court, who do they sue and who do they serve? In other  
5 words, do you sue -- I know you can sue justices in  
6 their official capacity, you can do that. But when  
7 you're suing the court, is it just you're suing the  
8 state, or are you suing the court as a governmental unit  
9 of the state, and who do you serve?

10 I thought the secretary of state, but I don't  
11 know. Do you know?

12 MS. SMITH: Because of the separation of  
13 powers, it's a separate branch of government, it would  
14 have to be served on presumably the Administrative  
15 Office of the Court, and the court -- I don't think the  
16 secretary of state who is part of the -- although the  
17 secretary of state is a unique --

18 THE COURT: I just mean for the purposes of  
19 accepting service, not as a litigant or a party. I  
20 mean, exactly. I guess you're trying to tell me you  
21 think the entity to serve would be the AOC. I'm not  
22 sure what the authority is for that, but I don't know  
23 the answer to it either. That's why I'm asking.

24 MS. SMITH: Right. I can tell you that is the  
25 practice --



1 THE COURT: It is?

2 MS. SMITH: -- that claims to the court get  
3 served on the Administrative Office of the Court.

4 THE COURT: That's a good answer. All right.  
5 Is there anything else you wanted to say to  
6 me?

7 MS. SMITH: I had two small other points in  
8 listening to -- I'm sorry, but I can't pronounce your  
9 last name correctly, and I apologize for that.

10 One is that, regarding his claim, he was not  
11 allowed to present evidence regarding the itemization  
12 because he had previously filed a motion for  
13 reconsideration regarding the request for attorney's  
14 fees, et al.

15 THE COURT: Yeah.

16 MS. SMITH: To the extent there's a rule  
17 discouraging repeat motions for reconsideration, that  
18 wouldn't have barred a motion or an objection to the  
19 itemization.

20 THE COURT: Yeah.

21 MS. SMITH: So that was the only thing there.

22 To the extent that he had some -- he had  
23 talked quite a bit about objecting to the distinction  
24 between original jurisdiction and appellate  
25 jurisdiction.

1 THE COURT: Yes.

2 MS. SMITH: And that somehow the order of  
3 attorney's fees is invalid because it's original  
4 jurisdiction and there's no appeal from it in the state  
5 court system. You're probably very familiar with the  
6 history of state court. There has not always been --  
7 there is not an appeal of right regarding everything in  
8 the state court system.

9 THE COURT: No, no.

10 MS. SMITH: And there's actually a First  
11 Circuit case where an attorney argued that the  
12 challenge, it was a divorce order, that there was not an  
13 appeal of right to, that that was a denial of  
14 constitutional rights because there wasn't an appeal as  
15 a right to every state court order, and that was  
16 rejected by the First Circuit. I don't have the cite  
17 here, but I was involved in that case. So the case name  
18 involved was Mr. D'Angelo versus the court system.

19 THE COURT: I'm familiar with the case. I am.  
20 All right.

21 MR. MARAVELIAS: Your Honor, may I briefly  
22 respond?

23 THE COURT: I'll give you the last word for  
24 now, Mr. Maravelias.

25 MR. MARAVELIAS: Just briefly on two points.

1 First of all, I did read that case, the Mr.  
2 D'Angelo case. That's distinguishable because it's been  
3 held there's no mandatory right of appeal where there's  
4 no federal constitutional right.

5 Here there is. There's the due process.  
6 There's also the equal protection. So I can talk about  
7 that later today, but in order to sustain --

8 THE COURT: I'm just curious. What's your  
9 equal protection? Due process is one of those fairly  
10 amorphous claims that lots of things can fit into. What  
11 would be equal protection? What's your protected  
12 status?

13 MR. MARAVELIAS: Similarly situated to pro se  
14 litigants who have faced similar circumstances where the  
15 opposing party filed a motion for attorney's fees.

16 THE COURT: So it's pro se litigant?

17 MR. MARAVELIAS: Pro se litigant and also me  
18 individually. So the United States Supreme Court in  
19 Village of Willowbrook versus --

20 THE COURT: So you're a class-of-one?

21 MR. MARAVELIAS: Class-of-one. But I don't  
22 even need to rely on the class-of-one doctrine.

23 THE COURT: Well, you said you individually.

24 I'm just trying to understand. As an equal  
25 protection violation, what is your category?

1           MR. MARAVELIAS: An individual litigant pro se  
2 in the New Hampshire Supreme Court, and as Paul  
3 Maravelias, someone who has spoken publicly against the  
4 people over there and they do not like as an individual.

5           And to sort of buttress that claim, I went  
6 through the Rule 23 case law, sparse as it is, and saw  
7 some very, very illuminating circumstances where there  
8 were way more frivolous circumstances trying to obtain  
9 an adjudication of the same rejected legal argument for  
10 the fourth time, and they still denied the Rule 23, and  
11 I have others. That clearly shows, along with the  
12 timing of those two orders, that goes back to the first  
13 retaliation claim, they're acting in bad faith, it's  
14 retaliatory, putting me into a class-of-one.

15           Secondarily, the matter about the Rule 22  
16 motion for reconsideration. Could I have filed another  
17 motion for reconsideration about, like, separating the  
18 merits of the judgment itself to the itemization of the  
19 fees? I disagree with that, but my point to the Court  
20 at this stage is that that's a factual matter and  
21 dismissal at this stage would not be appropriate since  
22 we have to assume that all of the facts are of course  
23 not conclusions of law, but that's a factual dispute  
24 that I could have a right to use discovery to prove  
25 that, no, in fact I did not have meaningful recourse

1 under the appellate rules of the state of New Hampshire  
2 Supreme Court to file another motion for  
3 reconsideration. So that's a factual, not a legal  
4 question.

5 THE COURT: All right. I'm going to have one  
6 more question for you, Mr. Maravelias, and then I want  
7 to take a short break to give the reporter a break, and  
8 I'm going to confer with my law clerks a little bit and  
9 see what they think about a couple of things, and then  
10 I'm going to come back out.

11 If I told you hypothetically that I actually  
12 think you have a valid, not a valid, but you have a  
13 colorable claim here that should not be dismissed of a  
14 facial challenge to Rule 23, would you want to leave it  
15 as is, or would you want to amend it and replead it?

16 MR. MARAVELIAS: If I were a hundred percent  
17 sure that the only remedy that I would be -- that the  
18 only claim I could pursue in this court would be the  
19 facial challenge, which I do not assent to that.

20 THE COURT: You don't assent to it. I know.  
21 I'm not trying to talk you into it. I'm just asking a  
22 question.

23 MR. MARAVELIAS: Right. In that case I would  
24 appreciate a second amended complaint to buttress that.  
25 I think the Court would benefit from more comparative

1 research to the other comparative statutes.

2 That part of my amended complaint was probably  
3 the most cursorily done.

4 THE COURT: Yeah, it's -- thinking about that,  
5 to be honest -- let me talk to you about it though,  
6 because to me -- I mean, I actually think Rooker-Feldman  
7 bars much of this. I do.

8 So if I allowed you to amend on your facial  
9 challenge to that rule, which would not be an attempt to  
10 undue the order to pay attorney's fees. It would be a  
11 challenge to that statute as you describe as violative  
12 of the United States Constitution. That wouldn't be  
13 asking for you to, like, replead all your other claims  
14 trying to re-litigate this motion. I'm not looking for  
15 that. Do you understand that?

16 MR. MARAVELIAS: I understand currently, sir,  
17 that if this Court were to dismiss my claims which are  
18 outside the scope of the facial challenge, and, you  
19 know, I could take an appeal of that.

20 THE COURT: Yes.

21 MR. MARAVELIAS: But then if I were to file a  
22 second amended complaint that my argumentation would be  
23 fully divorced from these specific acts and would focus  
24 on the language and the overbreadth doctrine and what  
25 level of due process protections and the comparison to

1 the federal rules of procedure, appellate Rule 38, which  
2 has something similar but way better and it's not  
3 facially invalid, and I would be very disciplined and  
4 respectful not to disobey the intention.

5 THE COURT: Let me ask you just one more  
6 factual question.

7 So Attorney Brown and the family that you're  
8 involved in this litigation with, or were, where does.

9 +that stand? Is he still trying to collect  
10 every penny? Has he offered a way out of all this?

11 MR. MARAVELIAS: I think he is very scared  
12 because he understands that his conduct in relation to  
13 this was criminal, and in the motion for contempt that I  
14 filed with --

15 THE COURT: You think Simon Brown is fearful  
16 that his conduct was criminal in some way you've  
17 exposed?

18 MR. MARAVELIAS: Yes, your Honor. I  
19 enumerated 23 counts of criminal misconduct. I did not  
20 submit that motion for contempt in this court because  
21 this lawsuit is not against Simon Brown. This lawsuit  
22 is against the governmental entity insofar as it had a  
23 duty --

24 THE COURT: Let me ask you this question. Did  
25 you ever consider hiring a lawyer?

1 MR. MARAVELIAS: Your Honor, I did the first  
2 time around when they first put the stalking -- this  
3 restraining order against me in 2017, and I didn't at  
4 the original stalking hearing for this restraining  
5 order.

6 I didn't stalk this girl. I know I'm right.  
7 They're lying. So I didn't think I needed an attorney.  
8 That turned out to be a fatal error.

9 And when I did hire an attorney and spent all  
10 the money I had pretty much to make that first appeal of  
11 the restraining order back in 2017 --

12 THE COURT: Slow down.

13 MR. MARAVELIAS: -- the New Hampshire Supreme  
14 Court completely denied -- they didn't deny it, but they  
15 affirmed.

16 THE COURT: Affirmed.

17 MR. MARAVELIAS: They affirmed not  
18 adjudicating the merits of my claim but saying, oh, you  
19 didn't preserve this.

20 And to be honest, I'm thinking of bringing  
21 another federal suit because I've seen other restraining  
22 order appeals where it's an attorney that they like, or  
23 if it's not me, and they argue plain error, hey, my  
24 client was pro se in the restraining order hearing but  
25 you should hear these arguments under plain error



1 because of substantial fairness, and they reverse.

2 THE COURT: You're not alone in this approach,  
3 but you definitely seem to think that, you know, the  
4 solution to all your litigation problems is more  
5 litigation. I'm just wondering how you came to that  
6 conclusion. You're obviously such an articulate, bright  
7 person, but this stuff has to be taking up a lot of your  
8 time and energy.

9 MR. MARAVELIAS: Yes, sir.

10 THE COURT: By the way, I'm not suggesting  
11 that you don't sincerely believe you need to be  
12 vindicated. I get it. I take your word for it. I just  
13 wonder about the use of your time and resources when --  
14 I don't know -- or just the idea of maybe just getting  
15 some legal advice, because some of your arguments make a  
16 lot of sense. They really do. A lot of them don't, and  
17 there's no way for you to know that because you're doing  
18 the best you can with a great mind but not a lot of  
19 training, and I just wonder if just a little bit of  
20 expertise -- you have a right to be pro se, but I wonder  
21 if you might just be better positioned with some advice.  
22 I mean, are you in a position -- do you have the means  
23 to hire counsel, or is it just a situation where you're  
24 kind of stuck with litigating on your own because you  
25 don't have the resources?

1           MR. MARAVELIAS: I think it's a combination of  
2 both. I think I enjoy the learning experience, but of  
3 course I am not an attorney. I also really don't have a  
4 lot of disposable income.

5           It's also -- your Honor, frankly it's very  
6 emotional, and especially in the other case that's  
7 pending before Judge McAuliffe. That is such a black  
8 and white case that's even further beyond this in terms  
9 of illegality. I'm very motivated about that, and I  
10 know --

11           THE COURT: You've got a lot invested in it.

12           MR. MARAVELIAS: I have a whole lot invested  
13 in it, yes.

14           THE COURT: All right. We're going to take a  
15 little recess. I'll be right back. I just want to give  
16 the reporter a break.

17           (RECESS)

18           THE COURT: All right. I want to thank  
19 plaintiff and defendants' counsel for their arguments  
20 and their presentations. They were both helpful to the  
21 Court, both the written and oral.

22           Here's where I come out. Yeah, one thing I  
23 just want to make sure is a factual point. One thing  
24 that we've disagreed on, Mr. Maravelias, is just the  
25 idea that the attorney fee motion in the supreme court,

1 your view is that it was limited to fees incurred and  
2 costs incurred with respect to your motion to strike?

3 MR. MARAVELIAS: That's correct, your Honor.

4 THE COURT: And I think it was -- it's Exhibit  
5 D here on the amended complaint, but the motion argues  
6 that the appeal was "in whole frivolous and in bad  
7 faith," and it makes a request in the request for relief  
8 that, "The award of DePamphilis's attorney's fees in  
9 connection with defending this appeal."

10 I just think that read properly, and the way  
11 the Court fairly read it, it was for costs and fees  
12 incurred with respect to the appeal as a whole.

13 But look, if I'm wrong about that, you know,  
14 I'm sure you're going to appeal it. The Court of  
15 Appeals can tell me I was wrong, but that's how I read  
16 it. That's just a factual issue.

17 The bottom line is this. I'm going to grant  
18 this motion in part probably in the majority, but I  
19 think Mr. Maravelias at least arguably here has pleaded  
20 a colorable facial challenge to Rule 23. We'll talk  
21 about in a minute whether you want to go with the way  
22 you've pleaded it here or whether you want to amend, I'm  
23 going give you the choice, but for now I think I'm not  
24 going to dismiss that part of the claim.

25 I am going to dismiss most of the claim though

1 under the Rooker-Feldman doctrine and under judicial  
2 immunity. I'm not going to reach the Eleventh Amendment  
3 argument because I don't think it's necessary in this  
4 case.

5 But look, the defendant has argued that the  
6 Rooker-Feldman doctrine bars everything, and the  
7 plaintiff has said not so, it doesn't bar everything  
8 here, and he cites five reasons. One, that the fee  
9 award is not final; one that the fee award is not  
10 judicial or a judgment; one is that it's void; and one  
11 is that the doctrine will leave him without a remedy and  
12 there's a remedy for every injury.

13 I don't think those arguments prevail for the  
14 plaintiff in this case. I think Rooker-Feldman  
15 nonetheless defeats the claims.

16 However, I don't think Rooker-Feldman prevents  
17 his facial challenge to Rule 23, which is separate.

18 I'm going to address these issues one at a  
19 time here, and this order -- and the transcript is going  
20 to be your order, just so you understand that, because  
21 the case isn't over. We're going to continue.

22 With respect to the finality argument, the  
23 argument as I understand it from the plaintiff is that  
24 the state proceedings regarding the appellate fee award  
25 aren't over so Rooker-Feldman doesn't apply.

1           Now, the test is state proceedings are ended  
2     for the purposes of Rooker-Feldman if, one, the highest  
3     state court in which review is available has affirmed  
4     the judgment below and nothing is left to be unresolved;  
5     second, the state action has reached a point where  
6     neither party seeks further action; and third -- or  
7     third, the state court proceedings have finally resolved  
8     all federal questions in the litigation leaving only  
9     state law or purely factual issues. That's the  
10    Federación case, it's a 2005 First Circuit case, 410  
11    F.3d 17.

12           Now, the highest court in New Hampshire did  
13    issue judgment in this case, and that Court's procedures  
14    provides for no further consideration of this judgment.  
15    That's Rule 22.

16           Now, the plaintiff's motions don't disturb the  
17    finality of the supreme court's judgment. A party can't  
18    bypass Rooker-Feldman by simultaneously filing a federal  
19    lawsuit attempting to reopen a state court case with  
20    some kind of motion or unrecognized procedural  
21    undertaking.

22           So the cross-motions for contempt also do not  
23    affect the finality of the Rule 23 award because they  
24    concern enforcement of the award or a request for other  
25    sanctions.

1           This award is a "final judgment or decree  
2 rendered by the highest court of the state in which the  
3 decision could be had," and therefore the proceeding are  
4 over for the purposes of Rooker-Feldman." Again, that's  
5 the Federación case.

6           Now whether the act was a judgment, that's the  
7 second argument. The second argument the plaintiff  
8 makes is that the Rooker-Feldman doctrine bars only  
9 review of judicial orders. The plaintiff says this  
10 isn't judicial, it's not a judgment. He quotes Blacks  
11 Law Dictionary. He did today in court. My view is  
12 different though. I don't think the Blacks Law  
13 Dictionary definition cited by the plaintiff here  
14 suggests that a judgment can only exist if a party has a  
15 preexisting right. I just don't understand that to be a  
16 component or a prerequisite for a judgment. A fee  
17 award, even if it's not as a matter of right, resolves  
18 directed claims of the party in the judicial matter.

19           The Edlund versus Montgomery case, a District  
20 of Minnesota case, 2005, put it as follows:

21           "The award of attorney's fees and costs, or  
22 the decision to deny such an award as a sanction for  
23 attorney misconduct in the case, is a quintessential  
24 judicial act, part of resolving the dispute between the  
25 parties before the court." Again, Edlund v. Montgomery,

1 355 F.Supp.2d 987.

2 Now, Mr. Maravelias also argued that the fee  
3 award was legislative, not judicial, because the supreme  
4 court is sort of like, how do I put it, is the  
5 legislator. It promulgated Rule 23. I see what you're  
6 saying, all right?

7 Now, while the supreme court might act in a  
8 legislative fashion promulgating a rule, the application  
9 of that rule and the dispute in question between Mr.  
10 Maravelias and the DePamphilis family was judicial. It  
11 applied a preexisting rule. Although it was a rule that  
12 it had created, as the plaintiff points out.

13 I refer the parties to a 1983 U.S. Supreme  
14 Court case, the D.C. Court of Appeals versus Feldman,  
15 460 U.S. 462, where the court found that the court's  
16 application of a court-made rule in specific cases was  
17 in fact judicial.

18 On this judicial action argument Mr.  
19 Maravelias also argues that the award can't be judicial  
20 because the supreme court did not make specific findings  
21 of fact or cite any law, except Rule 23, or give him a  
22 hearing.

23 The supreme court fee award, though, accepted  
24 DePamphilis's argument, rejected Maravelias's argument,  
25 and specifically cited Rule 23 which allows -- which

1 only allows for the award of appellate attorney's fees  
2 "to a prevailing party if the appeal is deemed by the  
3 court to have been frivolous or in bad faith."

4 So, therefore, this Court's view is that the  
5 supreme court found the plaintiff's appeal was frivolous  
6 or in bad faith.

7 Now, I understand plaintiff may wish for more  
8 detail or wanted more findings, but I don't know of any  
9 threshold level of detail necessary to render a judicial  
10 ruling, a judgment or truly judicial -- a civil jury  
11 verdict is a great example of that, right? A civil jury  
12 verdict -- there might be one line on the verdict form:  
13 For which party do you find? Juries don't make  
14 findings. It's implicit that they made the finding that  
15 the elements of proof had been satisfied. It's just as  
16 implicit here that the New Hampshire Supreme Court made  
17 the findings that are required for the satisfaction of  
18 the Rule 23 burden.

19 The supreme court considered and rejected his  
20 motion to reconsider. That ruling is a judgment on the  
21 issues raised in that motion even after a detailed  
22 analysis, and a declaratory judgment finding that the  
23 Rule 23 award violated the Constitution would  
24 effectively have reversed that award. So to that extent  
25 the Rule 23 is barred to the extent it seeks to undo a



1 monetary award.

2 Now, Mr. Maravelias cites a couple of cases  
3 for the proposition that the supreme court's order here  
4 was not judicial, the Kiowa Indian Tribe case and the  
5 Fontana Empire Center, LLC case.

6 The Kiowa case is 150 F.3d 1163, and the  
7 Fontana Empire Center case is 307 F.3d 987, but those  
8 cases discuss challenges to the particular means used in  
9 those cases to enforce judgments, not to the legality of  
10 the underlying judgment. It was the means and  
11 enforcement.

12 And what Mr. Maravelias is seeking here is a  
13 declaratory judgment that would bar any enforcement of  
14 the judgment because the judgment itself was unlawful.  
15 He's not just seeking to bar enforcement by a particular  
16 means but any enforcement at all.

17 Those cases don't I think help his position.

18 Now validity. Mr. Maravelias also argues that  
19 the supreme court's fee award is void, just void,  
20 nonexistent, because it was made in a complete absence  
21 of jurisdiction and inconsistent with due process.

22 Defendants here point out, though, that Part  
23 II, Article 73-a, of the state constitution gives the  
24 New Hampshire Supreme Court the power to make rules with  
25 the force and effect of law that govern "the

1 administration of all courts in the state in the  
2 practice and procedure to be followed in such courts."

3 There's also a statute for that proposition.  
4 Section 490:4. RSA 490:4. Rule 23 is thus promulgated  
5 pursuant to lawful authority in this Court's view, and  
6 the supreme court does not act outside of its  
7 jurisdiction in awarding fees based on it.

8 Now, you know, in the United States of America  
9 many appellate courts have the authority to award  
10 attorney's fees. Federal courts do in -- Federal Rule  
11 of Appellate Procedure 38 permits a federal court of  
12 appeals to award damages and costs if it determines the  
13 appeal is frivolous. Courts of judgment have certain  
14 inherent powers "governed not by rule or statute but by  
15 the control necessarily invested in courts to manage  
16 their own affairs so as to achieve the orderly and  
17 expeditious disposition of cases." That's a U.S.  
18 Supreme Court case, Chambers versus Nasco, 501 U.S. 32,  
19 a 1991 case.

20 That's what I really meant, Mr. Maravelias,  
21 when I was telling you that I just can't imagine the  
22 U.S. Supreme Court telling the highest courts in the  
23 states that it can't administer its docket this way. I  
24 think that's just a matter of federalism and judicial  
25 comity. I don't -- I just don't foresee that kind of

1 finding.

2 Now, the New Hampshire Supreme Court has  
3 "recognized a constitutionally created court's power to  
4 award counsel fees in any action commenced, prolonged,  
5 required, or defended without any reasonable basis in  
6 the facts provable by evidence, or any reasonable claim  
7 in the law as it is, or as it might arguably be held to  
8 be." That's the Keenan case, 130 New Hampshire 494,  
9 1988.

10 Let me acknowledge, Mr. Maravelias, I know you  
11 don't consider your case to be that type of case. I do.  
12 Perhaps reasonable minds can differ about that. It's  
13 just that the supreme court does -- the New Hampshire  
14 Supreme Court does, and it's the highest court in this  
15 state. And Rooker-Feldman, by my view, doesn't permit  
16 me to express my disagreement with that conclusion.

17 This authority of the New Hampshire Supreme  
18 Court "rests not only on the essential judicial power to  
19 get the judicial job down once and for all but also on  
20 the power subsumed under equity jurisdiction to  
21 compensate a party for his opponent's unreasonableness  
22 in prolonging unnecessary litigation." Same case,  
23 Keenan case.

24 Now, Mr. Maravelias makes an interesting point  
25 that even if Rule 23 is valid, the supreme court here

1 didn't comply with it, didn't follow the rule, because  
2 it didn't make a specific finding that the appeal was  
3 frivolous or in bad faith. But as I've already  
4 discussed, I think it's implicit in the Court's ruling  
5 that it accepted DePamphilis's arguments that the appeal  
6 was frivolous and in bad faith. Mr. Maravelias did have  
7 notice of those arguments. He had an opportunity to  
8 respond and an opportunity to move for reconsideration.

9 He has pointed out some applicable authority  
10 requiring the supreme court to hold a hearing or make  
11 detailed findings before awarding attorney's fees.

12 The U.S. Supreme Court's statement in Roadway  
13 Express v. Piper that "a specific finding as to whether  
14 counsel's conduct constituted or was tantamount to bad  
15 faith should precede any sanction under the court's  
16 inherent powers."

17 But I think that holding by the supreme court  
18 is distinguishable. The supreme court there in the  
19 Roadway case awarded fees based on a statute allowing  
20 costs to be awarded against parties who unreasonably and  
21 vexatiously multiplied the proceedings. It's a very  
22 specific undertaking. Now, that's a standard for which  
23 -- did not involve bad faith. This involves bad faith.  
24 The New Hampshire court's ruling involved bad faith.  
25 The U.S. Supreme Court held that attorney's fees could

1 not be awarded as costs under that statute, but it did  
2 remand the case to the district court to consider  
3 whether fees might be available based on bad faith.

4 Here the New Hampshire Supreme Court awarded  
5 fees based on Rule 23, and therefore implicitly,  
6 necessarily, and specifically found that Maravelias's  
7 appeal was frivolous or in bad faith.

8 Again, I know Mr. Maravelias disagrees, but  
9 the final arbiter of that question is the New Hampshire  
10 Supreme Court.

11 The second to last argument that Mr.  
12 Maravelias advances against the Rooker-Feldman  
13 application in this case is the idea that it leaves him  
14 without a remedy. He says applying Rooker-Feldman to  
15 him and his case would leave him without an effective  
16 remedy and violates this doctrine *ubi jus ibi remedium*,  
17 for every wrong there must be a remedy, and his point is  
18 that the discretionary appeal to the U.S. Supreme Court  
19 cert. is not adequate in part because the process  
20 generally assumes at least one level of state appellate  
21 review, but he doesn't point to any authority suggesting  
22 that this maxim, this doctrine of remedy overrides  
23 Rooker-Feldman. I don't have any -- I couldn't find any  
24 authority either, looked for it, whether this idea of  
25 this remedy -- or this doctrine, the denial of a remedy

1 somehow undermines the application of Rooker-Feldman. I  
2 can't find authority for that.

3 He cites Helminski, which is a District of  
4 Colorado case, 603 F.Supp. 401, Mr. Maravelias cites it,  
5 and it involved a challenge to a federal court rule  
6 though, not a specific judgment. And that may be the  
7 key to this lawsuit here, a challenge to a rule as  
8 opposed to the judgment.

9 Now, these are facial challenges in some  
10 respect. At least claims 11 and 12 are facial  
11 challenges to Rule 23, according to Mr. Maravelias, and  
12 therefore not covered by Rooker-Feldman.

13 Defendants in this case have conceded that the  
14 Rooker-Feldman doctrine does not bar a general attack on  
15 the constitutionality of state law that does not require  
16 review of a judicial decision of a case, but this  
17 exception does not apply if the relief sought in federal  
18 court is directed towards undoing a prior state  
19 judgment. That's the argument Ms. Smith was making, the  
20 first thing she said today.

21 Now, while much of Mr. Maravelias's requested  
22 relief is directed toward undoing the fee award in this  
23 case, his complaint can be read as requesting a  
24 declaratory judgment that Rule 23 is unconstitutional  
25 separate and apart from any reference to the award. And

1 the D'Angelo case is the case I think that creates this  
2 opportunity. 212 District of New Hampshire 204. Judge  
3 DiClerico's case from 2012. The Westlaw cite is 2012  
4 Westlaw 6647807.

5 So I think while all of Mr. Maravelias's other  
6 claims and requested relief do run afoul of  
7 Rooker-Feldman and are thus barred by Rooker-Feldman, I  
8 think his facial challenge to Rule 23 requesting only  
9 declaratory relief is separable and colorable and should  
10 be allowed to proceed.

11 As far as the judicial immunities go, those  
12 doctrines buttress Rooker-Feldman in this case. The fee  
13 award was a judicial action in this Court's view. It  
14 was within the New Hampshire Supreme Court's  
15 jurisdiction based on this Court's view, so I think  
16 Chief Justice Lynn is entitled to judicial immunity on  
17 that point.

18 The Mann v. Conlin case, 22 F.3d 100, stands  
19 for the proposition that the award and collection of  
20 attorney's fees are paradigmatic judicial acts even if  
21 they're erroneous or unduly harsh.

22 Now, since the Rooker-Feldman doctrine bars  
23 all of these claims other than the facial challenges,  
24 I'm not going to reach the Eleventh Amendment, but the  
25 plaintiff's facial challenges to Supreme Court Rule 23

1 are thus not barred by the Rooker-Feldman doctrine or  
2 defendants' asserted immunities.

3 Now, they may be vulnerable to another motion  
4 to dismiss, that's certainly in play, but for today the  
5 motion is denied as to that.

6 I'm going to ask you then -- I think you know  
7 where I'm coming from here. I think your facial  
8 challenges are separable from your request to undo the  
9 order, and that's not barred by Rooker-Feldman.

10 So the question is -- likely I would  
11 anticipate the defendant -- you're going to move to  
12 dismiss that as well as a facial challenge, qua facial  
13 challenge, right? Do you understand me? Should I  
14 correctly assume that you're going to move to dismiss  
15 the facial challenge as a facial challenge?

16 MS. SMITH: Yes.

17 THE COURT: Okay. That said though, you  
18 didn't -- you know, you've been dealing with it as a  
19 Rooker-Feldman challenge, and I do want to give you the  
20 opportunity to reframe your challenge. I mean, I could  
21 dismiss the whole complaint without prejudice to that,  
22 but I don't want to make you start your lawsuit all  
23 over. I don't think it makes sense -- or I don't think  
24 it's a good use of resources. It might end up with  
25 another judge, and honestly I think I ought to handle



1 this because I know about the case now. I understand  
2 where you're coming from.

3 So do you want to amend your complaint? You  
4 can amend it to state only a facial challenge to Rule 23  
5 without, you know, an effort to undo the ruling, just a  
6 facial challenge with respect to which you have  
7 standing. Is that something you would like to do?

8 MR. MARAVELIAS: Yes, your Honor, and thank  
9 you for your thoroughness.

10 THE COURT: How much time would you like to do  
11 that?

12 MR. MARAVELIAS: I would like 60 days, your  
13 Honor. I would also ask for a bench ruling, either on  
14 fact or on law, I'm not sure, but on whether the named  
15 defendants would be acting in an enforcement capacity.

16 So assuming the Court is correct that the  
17 declaratory relief I have requested is afoul of the  
18 Rooker-Feldman doctrine because it requires review and  
19 rejection of a judicial act, are the defendants acting  
20 in their enforcement capacity? Because if they are, a  
21 federal statute, 42 U.S.C. 1983, puts me in quite a  
22 quandary. It says, "Injunctive relief shall not be  
23 available unless a declaratory decree was violated or  
24 was not available." So this is a catch-22 situation.

25 I can't ask for declaratory relief because

1 that runs afoul of the Rooker-Feldman doctrine.  
2 However, in theory, as the distinction you made, if  
3 we're just going after the enforcement of an order,  
4 which would be repugnant to my federal constitutional  
5 rights, that would not frustrate -- those Kiowa Tribe  
6 case and the other one. However, I can't come for just  
7 the injunctive relief, prospective injunctive relief if  
8 I can't get the declaratory.

9           So I just want to preserve that argument for  
10 the First Circuit. I understand it's an interesting  
11 area of law. I didn't look too much into that, but I  
12 think that if this Court issuing a bench ruling on  
13 whether or not the defendants would have an enforcement  
14 capacity in that attorney's fees order, whereas it might  
15 be different if it's a regular attorney's fees order in  
16 a lower court as usually happens, I think that that  
17 bench ruling might confine if I decide to appeal that  
18 aspect, so I would ask for that.

19           But on the idea of the amended complaint and  
20 just the facial challenge, I appreciate that, I thank  
21 you for that, and, yes, I would like to do that.

22           THE COURT: I'll give you the 60 days.

23           MR. MARAVELIAS: Thank you, your Honor.

24           THE COURT: I'm trying to wrap my mind around  
25 the request you're making though here because I don't

1 think you have to sue anybody -- I don't think you have  
2 to sue any individual judge, individually or in an  
3 official capacity, to mount this challenge to Rule 23.  
4 I don't think you need to do that.

5 Why do you want to do that?

6 MR. MARAVELIAS: Well, in order to --

7 THE COURT: That's what you want, right?

8 MR. MARAVELIAS: Well, I just want an  
9 adjudication on two things. The facial  
10 unconstitutionality. I have an altruistic purpose in  
11 that, to make sure other litigants aren't put in this  
12 position that I am. And the first thing is what you're  
13 denying right now, you know, to preclude the enforcement  
14 of that.

15 The federal legislature has required me to  
16 obtain declaratory relief that this particular order is  
17 unconstitutional federally before I could obtain the  
18 okay, non-Rooker-Feldman violative relief  
19 that's perspective injunctive --

20 THE COURT: Of an enforcement capacity?

21 MR. MARAVELIAS: Towards the enforcement  
22 capacity.

23 So to make a very brief reference to my other  
24 federal lawsuit in this court, that problem doesn't  
25 exist because the relief I'm requesting there, the state

1 of New Hampshire criminal enforcement, the attorney  
2 general, the county attorney, my local police  
3 department, I sued them for their enforcement capacity.  
4 I threw in the judge, too, but that's a different reason  
5 there.

6 This is different because who's going to  
7 enforce -- it's not a criminal charge if an enforcement  
8 proceeding were to be brought against me.

9 THE COURT: Yeah, I don't think the judges  
10 would need enforcement though. I think it would be, you  
11 know, the sheriff, however you seek to enforce a civil  
12 remedy. I don't view the judges -- the judges are  
13 acting judicially. And if that's what you're asking in  
14 ordering attorney's fees, I think that's a judicial  
15 decision entered in a judicial capacity and thus barred  
16 by Rooker-Feldman and immunity.

17 So I'm not going to tell you how to bring your  
18 lawsuit, to be honest. I asked a few questions to  
19 Attorney Smith about who's the proper party and who do  
20 you serve. Frankly, you know, I don't know what  
21 position she'll be in, but you don't have to do any of  
22 that. You just amend.

23 I don't view this as a situation where you  
24 need to include justices to seek this relief.

25 Your point is, then what do I do for the next

1 step because I need this declaratory judgment first. I  
2 think you cross that bridge when you come to it, but I  
3 can't give you advice about how to proceed.

4 I'm not sure what judicial ruling you're  
5 asking me for. You've asked me a couple times, and I  
6 know you're doing your best, but I'm not following you.

7 MR. MARAVELIAS: Whether or not the defendants  
8 acted in an enforcement capacity with respect to the  
9 order awarding \$4,900 allegedly under Rule 23, assuming  
10 it's a valid judicial act, because there's case law in  
11 Consumers Union versus the Supreme Court of Virginia  
12 that says, well, the supreme court -- the state supreme  
13 court justices were validly held in their enforcement  
14 capacity. It only happens -- typically the only time  
15 that that happens is in a bar -- well, for instance,  
16 Piper versus New Hampshire Supreme Court, it was a  
17 United States Supreme Court appeal, and the New  
18 Hampshire Supreme Court justices back in the '80s where  
19 it lively held from an enforcement capacity, and the  
20 attorney from Vermont was denied because there was a  
21 practice under the color of state law, and the New  
22 Hampshire legislative promulgators thereof also enforced  
23 it.

24 I think that's an additional aspect. I'm not  
25 asking you to reconsider. I mean, I want to research it

1 more and see if it's worth an appeal, but it might save  
2 us all some time if the Court were to make a bench  
3 ruling on whether or not the defendants have an  
4 enforcement capacity because --

5 THE COURT: Have an enforcement -- I don't  
6 know. I know in this case they were acting in a  
7 judicial capacity, not an enforcement capacity. That's  
8 the ruling.

9 MR. MARAVELIAS: So the Court's position is  
10 that they're mutually exclusive, they cannot have both a  
11 judicial and an enforcement capacity?

12 THE COURT: I didn't say that. Look, if you  
13 want to amend your suit in a way that you think captures  
14 your conduct in a permissible way as part of a facial  
15 challenge, have at it. I can't micromanage your lawsuit  
16 from here.

17 MR. MARAVELIAS: Yes, your Honor.

18 THE COURT: I'm only making a ruling on the  
19 filings you've made, your complaint, and the filings  
20 that were made against it. I've granted the majority of  
21 it, but I have not dismissed the case as a facial  
22 challenge, and you have 60 days, which is -- we're going  
23 to call it --

24 THE CLERK: December 16th, your Honor.

25 THE COURT: December 16th as a deadline to

1 file your amended complaint alleging a facial challenge  
2 to Rule 23 in however way you want.

3 All right. Just give me a moment. Okay.  
4 Fair enough. I appreciate your presentations.

5 I know it's not easy being a pro se litigant.  
6 I hope your experience was, you know, at least not  
7 distressing.

8 Is there any other -- I think I've made your  
9 last requested ruling, which is that the judges in this  
10 situation ordering attorney's fees under Rule 23 are  
11 acting in a judicial capacity, not an enforcement  
12 capacity.

13 Is there any other finding or ruling that I  
14 haven't made or neglected that anybody wants me to make?

15 (No response)

16 No? All right. We're adjourned.

17 (Conclusion of hearing 4:48 p.m.)  
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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 11-18-19

/s/ Susan M. Bateman  
SUSAN M. BATEMAN, LCR, RPR, CRR